

# **Labor Management Advisory Council**

**August 11, 2020**

All Attendees via Zoom:

Jason Swant, ERD	Don Judge, Injured Workers Resource Council
Lt Governor, Mike Cooney	Casey Kyler-West, ERD
Eric Strauss, ERD	Cindy Zimmerman, ERD
Vicki Evans, Montana Contractors	Mike Marsh, Midland Claims
Al Smith, MT Trial Lawyers Assoc.	Adam Haight, AFL-CIO
Lance Zanto, WC Management Bureau	Bill Wheeler, ERD
Peter Van Nice, ERD	Bri Lake, ERD
Mark Cadwallader, Attorney	Emily Healy, ERD
Peter Strauss, MT Self-Insured Assoc.	Kevin Braun
Bryan Page	Bridger Mahlum, MT Chamber of Commerce

**Agenda was approved.**

## **Discussion item: SIF Recap; Bill Wheeler**

Bill outlined how there have been several discussions about whether SIF has outlived its purpose in Montana or not. Raised questions from January meeting of: does it still benefit injured workers? Does it still benefit employers? From ERD perspective, no benefit to injured workers. The benefit is hard to figure out for employers insured with Plan 2 & 3. No net benefit; info still not available for benefit of Plan 2 & 3. Plan 1 benefit depends, some have net gain, net loss or a wash.

Vicki suggested we look at different situations, expand to potentially help folks who are trying to keep a job, and get back to work and don't want to at home and collect a check. Maybe discuss practices or policies for incentivizing stay at work, return to work. Legislation may or

may not be needed depending on the changes. Mike Marsh and Vicki Evans will work on providing more info and suggestions for the next LMAC meeting.

Lance Zanto suggested we figure out how much money is collected in SIF, then we know how much savings would be generated by eliminating it. Savings to employers that don't benefit from SIF, not a system wide savings.

From FY 2008 to FY 2020, total reimbursements totaled \$10,000,000+ and total assessments totaled \$11,000,000+. Further discussion will take place at the next LMAC meeting.

### **Discussion Item: Plan 2 Security Deposits; Peter Van Nice**

Peter gave a history recap: 1997- security deposit requirement amended out, eliminate security deposits for plan 2.

2007- Plan No. 2 security deposit requirement was again amended to add back a requirement of a Plan 2 insurer.

Department of Labor regulates Plan 2s. Department currently requires security deposit of Plan 2 upon approval of Insurance Commissioner. Security held in trust at US Bank. When a Plan 2 goes solvent, Western Guaranty fund gets notice right away, then they will pick up the process.

Peter suggests a vote for a legislative change. We will leave this on the agenda, vote at next meeting: remove our need of collecting deposits.

### **Discussion Item: Benefit Brochure Recap; Jason Swant**

A vote will be required at some point. Section 2 change: removed language subject to conversation at the last meeting.

Up for discussion: department sending the pamphlet out. Pamphlet would go out with return to work, stay at work notice. Some concerns: is this a duplication of effort? Will this cause confusion for the injured worker if they are receiving a pamphlet from the department and the WC insurer? Injured worker needs to work with their claims examiner, not a 3<sup>rd</sup> party.

Another concern: there is no way to validate if the insurers are really sending all the information. If the department sends out the info, this guarantees every injured work will receive the information.

Don Judge stated: leave the language alone, but add non-profit info, and the information regarding benefits should've been sent by the insurer when the worker was injured.

Further discussion will be had at a later Meeting.

## **Discussion Item: MT Worker's Comp & COVID-19 Update- Part 2; Bri Lake**

For June and July claims, there are still fewer than last year and the year before currently across all industries. COVID related claims have almost tripled since May. 128 FROIs have been submitted (not confirmed positive cases, mainly exposure). 29 have been denied for various reasons: no medical info, does not meet definition of injury/occupational disease, not in scope of employment or not cooperative in investigation. 2 have been accepted for wage loss benefits in the healthcare field in retirement facilities.

30+ states have either an executive order, legislation enacted, legislation proposed, a legislation proposal and executive order or other regulatory activity for WC compensability.

Peter Strauss commented he has seen 150 incident reports (potential exposure). Three claims were accepted, all in the healthcare system.

## **Discussion Item: Behavioral Risk Factor Surveillance System; Emily Healy**

Emily demonstrated how the dashboard works. There is 5 years of data. If you want more data, you can ask Emily; she may or may not be able to give out certain data due to confidentiality. If you have questions, please contact Emily.

Website: [Erd.dli.mt.gov/publications?d=behavioral-risk](http://Erd.dli.mt.gov/publications?d=behavioral-risk)

Survey was conducted through DPHHS. Funded by the CDC, survey consists of only Montana residents. The selection process for people getting surveyed was purchase phone numbers and randomly select which ones to call.

## **Discussion Item: Wage Integrity & Misclassification in Construction Industry;**

### **Eric Strauss**

The group met last week and discussed an overview of what's happened in the group. Inspections have increased. An Education Outreach Specialist has been hired. There were findings within the Pandemic Unemployment Assistance program of people underreporting their income or not reporting it at all.

3 law changes recommended:

1. Hold hiring agents accountable for hiring/misclassifying contractors (unregistered, revoked license, suspended license or denied).
2. Escalate fines for non-compliance.

- a. \$1000 for first offense
  - b. \$2500 for second
  - c. \$5000 for third
  - d. \$5000 for fourth and possibility of revoked or suspended license
3. Violation to perform work without Independent Contractor Exemption Certificate (ICEC) or perform work with a suspended or revoked license.

A vote will occur at the next LMAC meeting. Contact Eric for any questions. Draft legislation copies will be provided before the next meeting.

Audit group was completely suspended with the pandemic. Starting to get back into it now.

### **Public Comment- None**

**Next Steps:** next meeting vote on Plan 2 & law changes for contractors. Meetings have been every other month, next meeting potentially in early October. LMAC bills will be presented to Eco Affairs Committee sometime in September. Mike and Vicki will present their ideas for SIF and how to make it more beneficial next meeting.

**Kudos from Lt Governor to all State employees for stepping up to help during the pandemic.**